

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:08-CR-87-FL

UNITED STATES OF AMERICA, )  
)  
)  
v. )  
)  
)  
BRIAN LEE FOSTER, )

ORDER

This matter comes now before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge William A. Webb regarding defendant’s motion to dismiss (DE #11). In an M&R filed May 1, 2008, Magistrate Judge Webb recommended denial of the motion to dismiss. Defendant filed no objections to the M&R, and the deadline for doing so has passed. Upon careful consideration, the court denies defendant’s motion to dismiss.

The undersigned agrees with Magistrate Judge Webb’s careful analysis, and finds that the indictment meets constitutional requirements, enables defendant to adequately prepare a defense of the offense charged, and is specific enough to allow defendant to plead double jeopardy in any subsequent charges for the same offenses.<sup>1</sup> See, e.g., Hamling v. United States, 418 U.S. 87, 117 (1974) (“It is generally sufficient that an indictment set forth the offense in the words of the statute itself . . .”); United States v. Smith, 441 F.3d 254, 261 (4th Cir. 2006) (“Where a particular date is not a substantive element of the crime charged, strict chronological specificity or accuracy is not required . . .”); United States v. Amend, 791 F.2d 1120, 1125 (4th Cir.) (holding that an indictment


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<sup>1</sup> The court also notes, as did Magistrate Judge Webb, that defendant’s failure to comply with Local Criminal Rule 47.1(b) provides the court with an alternative ground for denying the motion.

is not legally insufficient if it fails to name co-conspirators), cert. denied, 479 U.S. 930 (1986).

In accordance with the foregoing, the court ADOPTS the Memorandum and Recommendation of Magistrate Judge Webb, and DENIES defendant's motion to dismiss (DE # 11).

SO ORDERED, this 12<sup>th</sup> day of June, 2008.

  
LOUISE W. FLANAGAN  
Chief United States District Judge